



FH

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

HMO/171116

PRELIMINARY RECITALS

Pursuant to a petition filed December 30, 2015, under Wis. Stat., §49.45(5)(a), to review a decision by Care Wisconsin, a Medical Assistance (MA) health maintenance organization (HMO), to deny a request for personal care worker (PCW) services, a hearing was held on February 16, 2016, at Madison, Wisconsin, with the parties appearing by telephone.

The issue for determination is whether the agency correctly denied PCW services based upon petitioner's medical record.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

I

Respondent:

Department of Health Services
1 West [REDACTED] Street, Room 651
Madison, Wisconsin 53703

By: Dr. [REDACTED]
Care Wisconsin
P.O. Box 14017
Madison, WI 53708-0017

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a 65-year-old resident of Dane County who receives MA. She recently was transferred into the Care Wisconsin HMO after previously being in fee-for-service status.
2. On December 18, 2015, [REDACTED] requested that the HMO approve 22.75 hours per week of PCW services. By a letter dated December 28, 2015, the request was denied by Care Wisconsin.

3. Petitioner received PCW services previously via the Department's prior authorization process. This request was the first to Care Wisconsin.
4. Petitioner has diabetes, breathing difficulties, reflux, and hypertension. The PCW request showed that she needs assistance with bathing, upper and lower body dressing, grooming set up, meal preparation and set up, and toileting.
5. The [REDACTED] request was contradicted by other medical records. Records showed that petitioner's breathing is adequate; she refilled a rescue inhaler only once in the past two years, and lung sounds and oxygen saturation are normal. There is nothing in her diagnoses that would suggest difficulty with bending or reaching.
6. Care Wisconsin referred petitioner to physical therapy. The therapist notes low back pain and left leg pain. She does acknowledge difficulty with bending but believes it can be improved with proper exercise.

DISCUSSION

Under the discretion allowed by Wis. Stat., §49.45(9), the Department now requires MA recipients to participate in HMOs. Wis. Admin. Code, §DHS 104.05(2)(a). MA recipients enrolled in HMOs must receive medical services from the HMOs' providers, except for referrals or emergencies. Admin. Code, §DHS 104.05(3).

The criteria for approval by a managed care program contracted with the DHCAA are the same as the general MA criteria. See Admin. Code, §DHS 104.05(3), which states that HMO enrollees shall obtain services "paid for by MA" from the HMO's providers. The department must contract with the HMO concerning the specifics of the plan and coverage. Admin. Code, §DHS 104.05(1).

If the enrollee disagrees with any aspect of service delivery provided or arranged by the HMO, the recipient may file a grievance with the department or appeal to the Division of Hearings and Appeals. Just as with regular MA, when the department denies a grievance from an HMO recipient, the recipient can appeal the department's denial within 45 days. Wis. Stat., §49.45(5); Admin. Code, §DHS 104.01(5)(a)3.

Personal care services are "medically oriented activities related to assisting a recipient with activities of daily living necessary to maintain the recipient in his or her place of residence in the community." Wis. Admin. Code §DHS 107.112(1)(a). Covered services include the following:

1. Assistance with bathing;
2. Assistance with getting in and out of bed;
3. Teeth, mouth, denture and hair care;
4. Assistance with mobility and ambulation including use of walker, cane or crutches;
5. Changing the recipient's bed and laundering the bed linens and the recipient's personal clothing;
6. Skin care excluding wound care;
7. Care of eyeglasses and hearing aids;
8. Assistance with dressing and undressing;
9. Toileting, including use and care of bedpan, urinal, commode or toilet;
10. Light cleaning in essential areas of the home used during personal care service activities;
11. Meal preparation, food purchasing and meal serving;
12. Simple transfers including bed to chair or wheelchair and reverse; and
13. Accompanying the recipient to obtain medical diagnosis and treatment.

Wis. Admin. Code, §DHS 107.112(b).

Personal care workers can spend no more than one-third of their time performing housekeeping activities. Like all medical assistance services, PCW services must be medically necessary and cost effective. Wis. Admin. Code, §DHS 107.02(3)(e)1 and 3.

It is evident from the number of appeals of PCW issues that for a long time the Department routinely granted PCW requests based upon home health agency submissions. In recent months the DHCAA has started to look more closely at these requests, often by comparing the deficits stated in the requests to the recipients' other medical records. That appears to be what occurred in this case. PCW requests were routinely granted, but when Care Wisconsin reviewed the December, 2015 request, it found discrepancies in the request's wording and, more importantly, deficits attributed to petitioner that did not match her diagnoses.

At the hearing Dr. [REDACTED] described the problems with the request with substantial detail. After two sessions of physical therapy petitioner's abilities appear to be improving. At this point I have to agree with the agency that the requested services have not been shown to be medically necessary. I believe petitioner's son when he testified that they actually do assist petitioner with bathing and dressing, but I question whether petitioner needs the assistance.

If after further review the agency still believes that PCW assistance is necessary it can always make another request to Care Wisconsin.

CONCLUSIONS OF LAW

Care Wisconsin correctly denied the requested PCW services because the request did not justify the medical need for the services.

THEREFORE, it is

ORDERED

That the petition for review is hereby dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

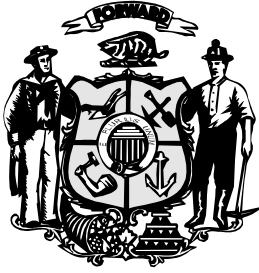
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West [REDACTED] Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in

this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 23rd day of February, 2016

\sBrian C. Schneider
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on February 23, 2016.

Division of Health Care Access and Accountability